International Brotherhood of Electrical Workers, Local 1579 *and* Steven Stripling. Case 10–CB–6157

March 10, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

On November 15, 1993, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

The facts, as more fully set out in the judge's decision, are as follows. Charging Party Steven Stripling began working for Austin Industries on June 10, 1991, where he performed both maintenance and electrical work. Austin Industries is located within the geographic jurisdiction of IBEW Local 1579, but is not signatory to any collective-bargaining agreement with any IBEW local. Stripling is a member of IBEW Local 776, but not of Local 1579, and thus is considered a ''traveler'' by the Respondent.

On June 12, 1991, Austin hired IBEW Local 1579 member John McDaniel and on March 2, 1992, Austin hired Local 1579 member Michael Murphey. These individuals were sent to Austin by the Respondent as ''salts,'' i.e., employees permitted by a union to work for a nonunion employer for the purpose of organizing its employees. However, McDaniel testified that he made no efforts to organize any employees while working at Austin.[2] McDaniel also testified that Union President Hal Cromer told him that Stripling was working at Austin when Cromer referred him to the job in June 1991. Cromer testified that ''99 percent'' of the individuals given permission by the Respondent to work for a nonunion contractor as salts were members of the Respondent. Employee Murphey was laid off for lack of work on May 1, 1992, and McDaniel was laid off on August 14, 1992. Stripling remained employed by Austin at all times material to this proceeding.

On October 19, 1992, Respondent's president, Cromer, filed internal union charges against Stripling based on his employment with Austin, a nonunion contractor. The charge alleged that Stripling was working for a nonunion contractor in the jurisdiction of Local 1579 without the consent of the business manager and without receiving a work permit, in violation of article XXVI, section I, subsections 5, 6, and 7 of the IBEW constitution.[3] Article XXVI, section 4, subsection 4 of the Respondent's constitution provides that charges against members must be submitted ''within sixty (60) days of the time the charging party first became aware, or reasonably should have been aware, of the alleged act or acts.''

After a union hearing, Stripling was found to have violated the union constitution as alleged and was fined a total of $1500. His internal appeal was denied on procedural grounds, in that he had not begun paying the fine within 15 days after the date of the decision as required by the IBEW constitution.

The Judge's Decision

The judge found that the Respondent violated Section 8(b)(1)(A) by fining Stripling for working for a nonunion employer. Applying the principles announced in *Scofield v. NLRB*, 394 U.S. 423 (1969), the judge noted that the rule against working for a nonunion contractor reflected a legitimate union interest and did not impair any policy imbedded in the labor laws. However, the judge found that the rule had not been reasonably enforced in this case because it was discriminatorily enforced against Stripling, a traveler, while members of Local 1579 were allowed to circumvent the rule, and because the charges were not timely filed under the Union's constitution. The judge also appears to have questioned whether the *Scofield* requirement that the rule be enforced against a union member who is free to leave the union and escape the rule was satisfied here, as Stripling was not a member of the Respondent.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Murphey did not testify.

[3] The cited provisions of the IBEW constitution provide as follows:

> Any member may be penalized for committing any one or more of the following offenses:
>
> . . . .
>
> (5) Engaging in any act or acts which are contrary to the member's responsibility towards the I.B.E.W., or any of its L.U.'s, as an institution, or which interfere with the performance by the I.B.E.W. or a L.U. with its legal or contractual obligations.
>
> (6) Working for, or on behalf of, any employer, employer-supported organization, or other union, or the representatives of any of the foregoing, whose position is adverse or detrimental to the I.B.E.W.
>
> (7) Wronging a member of the I.B.E.W. by any act or acts (other than the expression of views or opinions) causing him physical or economic harm.

Regarding the discriminatory enforcement of the rule, the judge noted that of the three IBEW members who worked for Austin, only Stripling, a traveler, was fined, while the Respondent's own members were not. The judge rejected the Respondent's explanation that the others were referred as salts, finding that McDaniel testified that he did no organizing work and noting also Cromer's admission that 99 percent of those allowed to work as salts were members of the Respondent. In addition, the judge found that the Respondent's animus against travelers was further demonstrated by its having previously been found to have unlawfully discriminated against travelers in *Electrical Workers IBEW Local 1579 (Cimco, Inc.)*, 311 NLRB 26 (1993).

The judge also noted that the timing of the internal union charges indicated that the rule was not being reasonably enforced, as the Respondent did not act to discipline Stripling until October 1992, after all of its members had been laid off. In this regard, the judge credited McDaniel's testimony that Cromer knew of Stripling's employment at Austin in June 1991. The judge concluded that the Respondent's violation of its 60-day time limit for filing charges further demonstrated that its actions were discriminatory and arbitrary.

Exceptions

The Respondent excepts to the judge's finding that it violated the Act by disciplining Stripling. In particular, the Respondent asserts that the judge erred in failing to credit Cromer's testimony that he filed the internal union charges within 72 hours of hearing of Stripling's violations, and notes that it is undisputed that Stripling is, in fact, guilty of working for a nonunion employer and that he was not a salt. The Respondent further asserts that the judge erred in finding that the other individuals who worked for Austin were not legitimate salts.

Discussion

We agree with the judge that, under the circumstances of this case, the Respondent violated Section 8(b)(1)(A) by imposing the fine on Stripling based on his employment at Austin.[4] Although a union may, of course, lawfully maintain and enforce rules prohibiting members from working for nonunion employers, we find in agreement with the judge that the Respondent violated Section 8(b)(1)(A) of the Act by enforcing the rule in an unreasonable manner against Stripling.

The legal standard for the enforcement of internal union rules is well settled. In *Scofield v. NLRB*, supra, the Supreme Court held that Section 8(b)(1)(A) does not bar a union's enforcement of internal rules which: (1) are properly adopted; (2) reflect a legitimate union interest; (3) impair no policy imbedded in the labor laws; and (4) are reasonably enforced against a union member who is free to leave the union and escape the rule. The only *Scofield* requirement at issue in this case is whether the rule was ''reasonably enforced.''[5] For the reasons which follow, we agree with the judge that it was not.

In this regard, it is undisputed that the Respondent imposed the fine solely on Stripling, a traveler, and did not similarly fine Murphey and McDaniel, members of the Respondent, who also worked for Austin. Moreover, we note that the Respondent failed to institute disciplinary proceedings against Stripling until after its members had been laid off by Austin, even though the credited testimony establishes that it was aware of Stripling's employment as early as June 1991.[6] Thus, the Respondent violated its own constitutional limitations period by failing to charge Stripling within 60 days of its knowledge of his alleged violation of its rules.

The Respondent asserts that its more favorable treatment of its own members is justified because they were salts referred to the Austin site for organizing purposes. We agree with the judge that this explanation is pretextual. Thus, the credited testimony discloses no evidence that either Murphey or McDaniel ever engaged in any organizing activity at Austin, or that the Respondent ever followed up on its initial request that they do so or inquired about the progress of their activities.[7] Further, the Respondent concedes that

[4] Although the internal union charge filed by Cromer additionally avers that Stripling failed to notify the Respondent of his employment at Austin, there is no evidence that any such lack of notice played a part in the fine which the Respondent imposed.

[5] The judge found that the provisions of the Respondent's constitution at issue in this case reflected a legitimate union interest and did not impair any policy imbedded in the labor laws, and no party has excepted to these findings. On the other hand, the judge appears to have concluded that Stripling was not free to resign from the Union and escape the rule, as he was not a member of the Respondent in the first place, but rather was a member of a different IBEW Local. We disagree with this finding, as there was no showing that Stripling could not have resigned from the International Union and escaped the rule. Finally, there is no contention that the rule here was not properly adopted.

[6] Indeed, that the Respondent would file and process internal charges which were untimely under its own constitution further demonstrates the unreasonableness of its enforcement action in this case.

In addition, we agree with the judge that the Respondent's past unlawful discrimination against travelers as well as its actions in this case establish animus against travelers such as Stripling. See *Electrical Workers IBEW Local 1579 (Cimco, Inc.)*, supra. In this regard, we note that the Respondent's unlawful discrimination against travelers in *Cimco*, principally its modification of its own hiring hall referral listing procedures to deprive a traveler of a referral to which he was entitled under the contractual hiring hall rules, is stikingly similar to its actions in this case.

[7] The judge's finding that McDaniel was not asked to help organize Austin Industries is erroneous, as McDaniel admitted that Cromer told him at the time of his referral that he was being referred to Austin for organizing purposes and that he understood that he should ''try to organize the company.'' However, based on the

Continued

99 percent of those individuals it refers to nonunion employers as salts are its members. Under these circumstances, we cannot avoid the inference that the salt program is a privilege of local membership, which the Respondent grants to its members, but not to travelers who are members of other local unions of the IBEW, and thus cannot serve as a legitimate nondiscriminatory reason for its actions regarding Stripling.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Brotherhood of Electrical Workers, Local 1579, Augusta, Georgia, its officers, agents, and representatives, shall take the action set forth in the Order.

Union's failure to follow up with McDaniel in any way whatsoever to find out what, if anything, had been done, we agree with the judge that the salt process was a sham.

Frank F. Rox Jr., Esq., for the General Counsel.
Charles A. Wilkinson III, Esq., of Augusta, Georgia, for the Respondent.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Augusta, Georgia, on August 26, 1993. The charge was filed on March 31, 1993. The complaint issued July 12, 1993.

All parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Following the close of the hearing, Respondent and the General Counsel filed briefs. On consideration of the entire record and briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Austin Industries, a Texas corporation, with a place of business in Augusta, Georgia, is engaged in the business of providing manpower services. Respondent admitted that Austin Industries annually provides from its Augusta, Georgia facility manpower services costing in excess of $50,000 directly to customers outside the State of Georgia. Respondent admitted that Austin Industries is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act (the Act).

Respondent admitted that it is, and has been at material times, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent engaged in conduct in violation of the Act when it fined Steven Stripling $1500.

On October 19, 1992, Hal Cromer, then president and organizer/assistant business manager of Respondent, filed charges against IBEW member Steven Stripling. Stripling was not a member of Respondent. He was a member of the IBEW local in Charleston, South Carolina. Cromer alleged that Stripling engaged in conduct in violation of the IBEW constitution:

> This violation occurred as follows: I received information that this I.B.E.W. member was working for a Non-Union Contractor. The investigation determined that Brother Stripling accepted work in the jurisdiction of Local Union 1579, without the consent of the Business Manager and without receiving a Work Permit.

Stripling disputed the charges and he participated in the trial at Respondent's hall. Nevertheless, on November 25, 1992, Respondent notified Stripling by letter, that he had been found guilty and fined $1500.

Stripling appealed the finding to the Fifth District, IBEW. On December 29, 1992, Stripling was notified that his appeal was rejected because Stripling had not paid any of the fine against him as required by the IBEW constitution.

Stripling and Cromer were acquainted before Cromer brought the charges against Stripling. Hal Comer was union steward on a job at the Savannah River site and Steven Stripling worked on that job. Stripling took a voluntary layoff from the Savannah River job in order to permit some Respondent members to work. Stripling later returned to the Savannah River job where he was laid off in May 1991.

Stripling admitted that he started work for Austin Industries in June 1991, without referral or permission from Respondent.

It is not disputed that Austin Industries was a nonunion employer. There was some dispute regarding whether Austin Industries was involved in maintenance work or work that was traditionally considered nonunion work which was in competition with union contractors.

The General Counsel contended that Respondent acted against Stripling in a discriminatory fashion. Respondent allegedly violated the Act when it brought charges against Steve Stripling then tried him and found him guilty because Respondent's actions violated the IBEW's constitution. The General Counsel argued that the IBEW constitution requires that charges must be brought within 60 days of the occurrence. Steve Stripling had worked for Austin Industries for over a year when charges were brought against him. The General Counsel argued that Respondent knew of Stripling's employment from around the time Stripling began working for Austin Industries in June 1991.

Respondent does not dispute that the IBEW constitution requires that charges must be brought within 60 days of notice. The provision is at article 26, section 4:

> Charges against members must be submitted to the R.S. of the L.U. in whose jurisdiction the alleged act or acts took place within sixty (60) days of the time the charging party first became aware, or reasonably should have been aware, of the alleged act or acts.

Respondent contended that it did not learn of Stripling's employment with Austin Industries until shortly before charges were brought against him.

Stripling was hired by Austin Industries on the NutraSweet job on June 10, 1991.

Respondent referred some of its members to Austin Industries as ''salts.''

Salts, are employees sent to a non union job for the purpose of organizing the employees of that nonunion contractor.

The General Counsel argued that Respondent discriminatorily referred members to nonunion contractors.

Hal Cromer, Respondent's president at material times, admitted that 99 percent of all salts referred to nonunion jobs were members of Respondent.

John McDaniel testified that he was asked by Hal Cromer in June 1991 to work at Austin Industries as a salt.

At the time Cromer told McDaniel about the job with Austin Industries, Cromer asked him if McDaniel knew Steven Stripling. McDaniel told Cromer that he did not know Stripling. Cromer said that Stripling was working for Austin Industries.

McDaniel applied for electrician work with Austin Industries on the NutraSweet job. After McDaniel was hired in June 1991, he returned to the hall and told Cromer and Assistant Business Agent Edgar Rooks that he had the job. Rooks asked McDaniel if he knew Steven Stripling. McDaniel replied that he did not know Stripling. Rooks told McDaniel they knew Stripling was working on that job and they were looking to file charges against Stripling.

McDaniel testified that he talked with Hal Cromer again after he had worked on the NutraSweet job ''probably a week or so.'' Cromer asked him if other people were working that job. McDaniel replied not to his knowledge. Cromer asked if Steve Stripling was still working there and McDaniel replied, ''[Y]es.''

Cromer denied that he told McDaniel that Stripling was working for Austin Industries. Cromer stated that he did not learn that Stripling was working for Austin Industries until shortly before he filed union charges against Stripling on October 19, 1992. Cromer testified that Respondent's business manager, Yarbrough, brought to his attention that Steven Stripling was working for Austin Industries on Friday or Monday, before Cromer filed charges against Stripling.

Cromer was asked if Stripling ever brought up that Respondent had known for more than 60 days that he worked for Austin Industries. Cromer admitted that at the trial on the charges against him, Steven Stripling brought up that Respondent had known that he was working for Austin Industries.

In fact, in addition to Stripling arguing at his trial that Cromer knew of his employment with Austin Industries for more than 60 days before filing the charges, Stripling's appeal of his conviction includes allegations that Respondent's officers, including Cromer, knew of his employment at Austin Industries since day one of his employment there. In that appeal Stripling stated that local members that worked at Austin Industries told him they were present at Respondent's hall when Stripling's working at Austin Industries was discussed.

Findings

Here the question involves union rules regarding employment with a nonunion contractor by an IBEW member other than a member of Respondent, without notice to Respondent. The evidence is not in dispute as to notice. Steven Stripling did not notify Respondent of his employment with Austin Industries on the NutraSweet job.

The record shows that three IBEW members were employed by nonunion employer Austin Industries on its NutraSweet job, during relevant times. Two of those employees were members of Respondent. The third, Steven Stripling, was a traveler. Instead of belonging to Respondent, Stripling was a member of the IBEW local in Charleston, South Carolina.

When charges were brought against Stripling, the two other IBEW members had been laid off from Austin Industries. Those two, both members of Respondent, were John McDaniel and Michael Murphey. McDaniel was employed by Austin Industries from June 12, 1991, until he was laid off on August 14, 1992. McDaniel was eventually rehired by Austin Industries but that occurred after the charges, trial, and conviction of Stripling by Respondent. Michael Murphey was employed by Austin Industries on the NutraSweet job from March 2, 1992, until he was laid off on May 1, 1992. Stripling continued to work at Austin Industries from June 10, 1991, until June 24, 1993, when he was transferred to Kimberly-Clark.

When Respondent's president filed charges against Stripling, Stripling was the only IBEW member working for Austin Industries. All of Respondent's members had been laid off.

The General Counsel argued that Respondent acted in an unreasonable, arbitrary, and invidious manner by circumventing its own constitutional requirement that charges must be brought within 60 days of the alleged infraction.

In consideration of the disputed testimony, Hal Cromer admitted that his testimony was in conflict with his prehearing affidavit. In his prehearing affidavit Cromer testified that he learned Stripling was working at Austin Industries from a member of Local 1579 and that he did not recall that member's name. On redirect examination Cromer testified that he learned of Stripling's job from Business Manager Yarbrough and that Yarbrough had learned of Stripling's job from members of the Local. Cromer contended in his prehearing affidavit, that ''[o]n or about October 15, 1992, a member of Local 1579 (don't recall who) informed me that Steven Stripling, a traveling Union member was working at the nonunion contractor Austin Industries at the NutraSweet job site.''

Respondent's business manager, T. S. Yarbrough, testified that he learned that Steven Stripling was working for Austin Industries on the NutraSweet job during the week before October 19, 1992. Yarbrough testified that a couple of members of Respondent told him about Stripling but Yarbrough could not recall who those members were. Yarbrough recalled that those members were not salts on the NutraSweet job but they were working for a union contractor.

As to the conflicts in the testimony of McDaniel and Cromer, I credit McDaniel. McDaniel appeared to testify truthfully on direct and cross. I was impressed with his demeanor. I find that McDaniel's credited testimony proves that Respondent knew that Steve Stripling was working for Austin Industries from June 1991. Although McDaniel admitted that before he testified, his membership in Local 1579 lapsed because he did not keep up his periodic due payments, I am convinced that did not influence his testimony.

A portion of McDaniel's testimony regarding Respondent's knowledge of Stripling's job during June 1991 was not rebutted. Assistant Business Agent Rooks did not testify.

McDaniel testified that first Cromer, then when he returned to Respondent's hall after getting the job at NutraSweet, Assistant Business Agent Rooks, told him they knew that Steven Stripling was working for Austin Industries on the NutraSweet job. I credit the unrebutted testimony of McDaniel as to what Rooks said to him and I credit his account of his conversations with Hal Cromer during June 1991.

As to the question of did Respondent know of Stripling's employment at Austin Industries for over 60 days, I find that the credited evidence proved that Respondent was aware of the alleged infraction by Steven Stripling for over a year when charges were brought against Stripling in October 1992.

Additionally General Counsel argued that Respondent's referral of salts to the NutraSweet job was a sham in that the salts were never asked to recruit employees to membership but were discriminatorily referred to the nonunion contractor as a privilege of local membership. John McDaniel testified, again in disagreement with the testimony of Hal Cromer, that he was never asked to supply Respondent with lists of employees for organizing or recruitment purposes. I credit that testimony by McDaniel which shows that he was not asked to help organize Austin Industries. There was no showing that Respondent ever took action to gain recognition of employees employed by Austin Industries. I do not credit Hal Cromer's testimony that he was given a list of employees but that he has misplaced that list.

The admission of Hal Cromer, proved that salts referred by Respondent, are routinely members of Respondent. Cromer admitted that 99 percent of all salts were members of Respondent.

The credited record shows that both Respondent President Hal Cromer and Assistant Business Agent Rooks knew of Stripling's employment at Austin Industries from the time when John McDaniel was employed at Austin Industries in June 1991.

Cromer was the member that filed the charges against Stripling in October 1991.

Section 8(b)(1)(A) of the Act states that it

> shall be an unfair labor practice for a labor organization or its agents, to restrain or coerce employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Unions are normally able to enforce internal rules without violating Section 8(b)(1)(A). See *Scofield v. NLRB*, 394 U.S. 423 (1968); *NLRB v. Allis-Chalmers Mfg. Co*., 388 U.S. 175 (1967).

Here, Respondent sought to enforce a rule against working for nonunion employers. It sought to enforce that rule against a nonmember of the Local and the evidence illustrated that local members were allowed to circumvent that rule.

The credited evidence showed that local members were, through the practice of working salts, permitted to work for nonunion contractors. At Austin Industries, during the time when Austin Industries worked Stripling and one or more local members, Respondent elected to do nothing to penalize Stripling.

In *Scofield*, supra, the Court held that a union was free to enforce rules without violating Section 8(b)(1)(A), if the rule was (1) properly adopted; (2) reflected a legitimate union interest; (3) impaired no policy which has been imbedded in the statutory labor laws; and (4) is reasonably enforced against union members who are free to leave the union and escape the rule.

Respondent ignored the 60-day restriction on disciplinary actions, incorporated in the International constitution. Although the rule enforced by Respondent, did reflect a legitimate union interest and did not impair policy imbedded in the statutory labor laws, the rule, as enforced against Stripling violated provisions of the International constitution. Nor was there any showing that the rule had been reasonably enforced against local union members who were free to leave the Local and escape the rule. Here the rule was enforced against someone that was not a member of the Local.

In *Painters Local 1140 (Harmon Contract)*, 292 NLRB 723 (1989), the Board sustained the administrative law judge finding of an 8(b)(1)(A) finding—as well as an 8(b)(2) finding—regarding the Union's action as to employees' discharges but the Board reversed the judge as to the bringing of internal union charges against the employees on the grounds of failure of the evidence to prove the first leg of *Wright Line*, 251 NLRB 1083 (1980). The Board found that it was the General Counsel's burden to prove that the Union acted discriminatorily in bringing internal union charges and that the administrative law judge had incorrectly held that the Respondent had failed to prove that it did not act discriminatorily.

Here, the record supports a finding of discrimination. When Respondent first knew of Stripling's employment at Austin Industries, Respondent sent first John McDaniel, then later, Michael Murphey, to work at Austin as salts. However, McDaniel was not asked to do anything in his role as a salt. Murphey did not testify.

Respondent did nothing to discipline Stripling within the 60-day time period following its first knowledge of Stripling working at Austin Industries. Instead Respondent waited until all its members had been laid off at Austin Industries to bring charges against Stripling.

The General Counsel asked that judicial notice be taken of a prior decision involving Respondent. *Electrical Workers IBEW Local 1579 (Cimco, Inc.)*, 311 NLRB 26 (1993). Respondent argued that I should not take judicial notice of the above decision. In view of Board precedent, I do take notice of the above decision. The General Counsel argued that the cited decision illustrated animus. *West Point Mfg. Co*., 142 NLRB 1161, 1163 fn. 3 (1963); *Plant City Welding & Tank Co*., 123 NLRB 1146, 1150 (1959).

The record proved that Respondent took action against Steven Stripling because Stripling was not a member of Respondent. Members of Respondent were permitted to work for nonunion employers as salts even though they were not required to aid it organizing those employers and the record and the case cited by the General Counsel prove animus. I find that the General Counsel proved a prima facie case.

Respondent's action against Stripling encouraged membership in the Local and thereby discouraged exercise of Section 7 rights. There was no showing that members were treated like Stripling, nor was there any other proof that Respondent would have fined Stripling in the absence of protected activ-

ity. It is true that Stripling failed to notify Respondent that he was working for Austin Industries. However, the credited evidence proved that Respondent was aware of that from June 1991. In view of Respondent's failure to act against Stripling within 60 days of learning that Stripling was working for a nonunion employer and that Stripling had not notified Respondent, I am convinced that Stripling would not have been disciplined if he had been a member of Respondent. That determination finds additional support in the proof that Respondent elected to take no action against Stripling while local members were employed by Austin Industries. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

CONCLUSION OF LAW

By filing charges against Steven Stripling, finding Stripling guilty and fining him, Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act and has committed unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily charged, tried, found guilty, and fined Steve Stripling because Stripling was not a member of Local 1579, must rescind its action against Steve Stripling including its findings of violations of the Union's laws and its fine against Stripling, and remove from its files any reference to its action against Stripling. Respondent shall repay with interest, all money paid to Respondent in regard to its fines against Stripling. *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, International Brotherhood of Electrical Workers, Local 1579, its officers, agents, and representatives, shall

1. Cease and desist from taking disciplinary action against employees because those employees are not members of Respondent.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its disciplinary actions against Steve Stripling including all references to its charges, trial, findings, and fine against Stripling.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Augusta, Georgia, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for mutual aid and protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT institute disciplinary proceedings against employees, nor shall we fine or otherwise punish employees because those employees are not members of the Local union.

WE WILL rescind all disciplinary actions against IBEW member Steven Stripling including all fines and any other actions.

WE WILL repay to Stripling, all money paid on the fines against Stripling with interest.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1579